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RONALD CUPP

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

RONALD CUPP, an individual,

Plaintiff,

vs.

COUNTY OF SONOMA, a municipal
corporation; TENNIS WICK, in his
individual and official capacities; TYRA
HARRINGTON, in her individual and official
capacities; TODD HOFFMAN, in his
individual and official capacities; JESSE
CABLK, in his individual and official
capacities; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 4:23-cv-01007

**[PROPOSED] FIRST AMENDED
COMPLAINT FOR DECLARATORY
RELIEF, INJUNCTIVE RELIEF AND
DAMAGES**

- 1) 42 U.S.C. § 1983 - VIOLATION OF 4TH
AND 14TH AMENDMENTS, U.S.
CONSTITUTION**
- 2) 42 U.S.C. § 1983, VIOLATION OF
8TH AND 14TH AMENDMENTS, U.S.
CONSTITUTION**
- 3) *MONELL* LIABILITY**
- 4) TRESPASS**
- 5) INVASION OF PRIVACY**

JURY TRIAL DEMANDED

*"The question we confront today is what limits are upon this power of
technology to shrink the realm of guaranteed privacy." -Kyllo v. United States*

COMES NOW, Plaintiff RONALD CUPP ("Cupp") and hereby alleges against
Defendants, and each of them, as follows:

I.

NATURE OF ACTION & INTRODUCTION

1. This action is based upon, and seeks compensatory and nominal damages as well as injunctive and declaratory relief to redress, violations of the Civil Rights Act of 1872, 42 U.S.C. § 1983, and the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, caused by Defendants, and each of them, acting under color of law, acting to promote or enforce unconstitutional or unlawful policies, practices, procedures, ordinances, resolutions, patterns of conduct, customs and usage of regulations adopted, employed or ratified by policy-making supervisors, managers, or decision-makers acting on behalf of Defendant COUNTY OF SONOMA (“the County”) in doing or causing the following to occur:

(A) Enactment & Implementation of Unconstitutional Code Enforcement Policy:

Acting through its Board of Supervisors, but in reality at the request, behest, insistence, and with the active participation and assistance of Defendants TENNIS WICK (“Wick”) and TYRA HARRINGTON (“Harrington”), the County enacted and implemented one or more official policies in 2017 that authorized, incentivized, instigated, promoted, approved, created, or established the County’s “Code Enforcement Enhancement Program” (CEEP). Defendant TENNIS WICK (“Wick”) is the Director of the County’s Permit Resource Management Department (a.k.a. “PermitSonoma”), a municipal agency within the County, which includes a Code Enforcement Division (“CED”) that investigates and enforces local building and zoning codes and regulations. Defendant TYRA HARRINGTON (“Harrington”) was hired through CEEP to be the Manager of CED. The County delegated rule-making and managerial authority to Wick and Harrington to write CEEP and implement it through CED. On information and belief, both Wick and Harrington were

1 actively involved in a decision-making capacity either in drafting CEEP or implementing
2 the policy after the County Board of Supervisors enacted it.

3 While ostensibly initiated and implemented by the County Board of
4 Supervisors, Wick, and Harrington to clear up a backlog of old local code violations cases
5 that allegedly languished due to staffing shortages, the true intent and purpose of CEEP
6 was to transform CED, a local law enforcement agency, into a profit-generating machine
7 for the County after the legalization of cannabis. CEEP authorizes, encourages, and rewards
8 illegal and unconstitutional behavior by CED, as more fully alleged herein, through a
9 concerted and purposeful scheme to maximize monetary proceeds and squeeze out every
10 dollar possible in the form of excessive fines and penalties levied against and at the expense
11 of, landowners in the County through the imposition of *new code violations* based on,
12 arbitrary, capricious, overly aggressive, and unlawful inspection, enforcement, and
13 collections methods and tactics by CED's inspection officers; specifically including, but not
14 limited to, Wick, Harrington, and Defendants TODD HOFFMAN ("Hoffman") and JESSE
15 CABLK ("Cablk"), who are two of CED's Senior Code Enforcement Inspectors who violated
16 Cupp's constitutional rights as alleged herein.
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20 Through CEEP, County landowners, including Cupp, have been subjected to
21 excessive and ruinous fines and penalties often for several hundreds of thousands of dollars
22 based on an arbitrary, capricious and subjective calculation method (which is based on
23 assigning arbitrary multipliers, such as 1, 5, or 10) that gives unfettered discretion to CED's
24 inspectors, like Hoffman and Cablk as well as Harrington as their manager, to determine
25 the amount of a landowner's fines and penalties ad hoc as each case arises. On information
26 and belief, a landowner who remains in CED's "good graces," might receive multipliers of 1
27 against their violations, while a landowner that gets "on the bad side" of inspectors; or
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1 worse still, Harrington, receive higher multipliers against their violations, even when there
2 is little to no evidence to support the violation in the first place.

3 In Cupp's case, as of November 2022, the County demanded over \$400,000
4 in fines, penalties, costs, and fees. On information and belief, that number is likely to have
5 doubled by now. Each time Cupp or his counsel have sought a specific amount of fines,
6 penalties, fees, and costs from the County, including through formal discovery, the County
7 responds through its counsel that it either does not know the amount, or it has yet to
8 ascertain the amount.
9

10 As part of CEEP's enactment, and as the policy has been implemented, the
11 County "streamlined" its enforcement mechanisms to unfairly favor itself at the expense of
12 the due process protections afforded to landowners. Prior to CEEP, and on information and
13 belief, CED's approach to local code enforcement encouraged landowners to voluntarily
14 remedy violations, rather than immediately impose crippling and punitive fines and
15 penalties. To this end, landowners were afforded a longer time to appeal a violation to an
16 administrative appeals process, and landowners received a courtesy notice from CED
17 advising them of any violations and providing an opportunity to cooperate with CED to cure
18 any violations before fines and penalties were imposed. CEEP's enactment and
19 implementation shortened the window of opportunity to appeal to 10 days from the date a
20 notice of violation is issued. As intended by the County and Wick and implemented by
21 Harrington, CEEP eliminated the courtesy notice altogether. Under CEEP, CED
22 immediately issues notices of violation to the landowner, which starts the clock on the
23 imposition of fines and penalties even before the time to appeal has run out, including the
24 shortened 10-day time to appeal. The County also immediately records notices of
25 abatement proceedings against the landowner's property, including Cupp's, encumbering
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1 the property and making it difficult or impossible for a landowner to use the equity in the
2 affected property to either dispute the violations or resolve them with the County. On
3 information and belief, these notices of abatement proceedings are recorded in violation of
4 California state law.

5
6 To make matters worse, these excessive fines and penalties levied pursuant
7 to CEEP accrue daily in all instances, sometimes by as much as \$10,000/day in the case of
8 cannabis violations, regardless of whether the violations implicate health and safety or pose
9 any harm to the community. Moreover, landowners such as Cupp cannot adequately defend
10 themselves because although the County puts landowners on a short leash to appeal
11 violations, the County often delays the administrative appeal process, even when a
12 landowner invokes it in a timely fashion. Nevertheless, the fines and penalties continue to
13 accrue. In some cases, because of its arbitrary, capricious, and subjective nature, a
14 landowner is not even notified about the manner in which the amount of the fines and
15 penalties were calculated (i.e., how the multipliers are applied) before the 10-day time to
16 appeal has expired. Thus, landowners often do not even know the extent of their liability,
17 or how it was calculated by CED, in order to make an informed decision about whether to
18 appeal the violation or resolve the matter with the County.

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21 Even during the COVID-19 pandemic, fines and penalties based on violations
22 issued by CED prior to the pandemic continued to accrue, including Cupp's fines and
23 penalties, even though much of the County including County Counsel's Office and
24 PermitSonoma was closed to the public for a period of time due to Governor Newsom's
25 "stay-at-home" orders, and they were not conducting business, rendering it impossible to
26 address or remedy any fines or penalties during the closure, even if a landowner desired to
27 do so.
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1 In addition, once a landowner has open violations, the County, acting through
2 CED, imposes arbitrary, capricious, unreasonable, and even impossible requirements in
3 order to obtain permits or otherwise remedy the violations, all the while accruing additional
4 excessive fines and penalties. In Cupp's case, the County violated his septic system and
5 refused to issue a permit until Cupp satisfied a percolation test that involved accumulation
6 of 6 inches of rain in a short period of time, an impossible requirement to meet in a state
7 experiencing a 100-year drought. Cupp was ordered to reduce the number of bedrooms at
8 the residence on the subject property from 4 bedrooms to 2 bedrooms, which Cupp did in
9 an effort to satisfy the County incurring substantial expenses and diminution in the value
10 of the subject property.
11

12 In Cupp's case, the County ordered PG&E to disconnect gas and electricity to
13 the subject property. When Cupp attempted to get the power restored by contacting PG&E,
14 PG&E would not restore gas and electricity because County Counsel Michael King would
15 not approve restoring these utilities. Nineteen months after it was first disconnected, and
16 the day after the County lost its motion for summary judgment in Cupp v. Smith, Case No.
17 4:20-CV-03456-PJH, Mr. King contacted PG&E and told them to restore electricity to the
18 subject property. To this day, gas has never been restored to the subject property. While
19 Cupp is no longer litigating a "taking" as a result of this events, these facts are among those
20 facts that demonstrate just how arbitrary and capricious the County's approach is to code
21 enforcement under CEEP.
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23 Additional facts that demonstrate the unconstitutionality of CEEP and the
24 practices that flow from it include, but are not limited to:
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1 (i) Submitting or causing the submission of a false or misleading
2 affidavit of probable cause in support of an inspection warrant for the subject property to a
3 judicial officer, giving Cupp neither notice nor an opportunity to be heard;

4 (ii) Instituting abatement proceedings against Cupp, including
5 recording or causing to be recorded an abatement lien against Cupp's title to the subject
6 property based on warrantless searches of the subject property and/or based upon an
7 inspection warrant issued only after completing warrantless searches of the subject
8 property and/or upon a false or misleading affidavit designed to mislead a judicial officer;

9 CEEP was enacted and implemented with the purposeful design to deprive
10 landowners in the County of their federal Constitutional rights by establishing, among
11 other things, the unconstitutional and unlawful, arbitrary and capricious means, methods,
12 and tactics as alleged herein to aggressively punish landowners with excessive fines and
13 penalties without affording adequate due process. On information and belief, CEEP has
14 been used to establish and unconstitutional pattern or practice that has affected thousands
15 of landowners in the County.

16 Specifically, Cupp contends herein that these arbitrary and capricious,
17 unlawful and unreasonable, overly aggressive and punitive tactics have been used, and
18 continue to be used by the County against him today, which have resulted, and continue to
19 result, in excessive fines and penalties imposed against him in an amount not less than
20 \$800,000, or according to proof, in violation of the 8th Amendment, which was made
21 applicable to the states by way of the 14th Amendment in *Timbs v. Indiana*, 139 S.Ct. 682,
22 687 (2019) [8th Amendment applicable to states through 14th Amendment]; and as made
23 applicable to municipal fines and penalties as set forth in *Pimentel v. City of Los Angeles*,
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1 974 F.3d 917, 922 (2020) [4-factor 8th Amendment analysis set forth in *U.S. v. Bajakajian*,
 2 524 U.S. 321, 336-337 applies to govern municipal fines].

3 **(B) The County's Use of Warrantless Searches Involving "Drones":**

4 In furtherance of, and as part of, its aggressive and unlawful code
 5 enforcement methods and tactics implemented under CEEP, in September 2019, the
 6 County, acting through PermitSonoma, approved a formal, written policy on the use of
 7 "unmanned aircraft systems" (a.k.a. "drones") for CED inspection officers to utilize to
 8 search private property in the County. On information and belief, CED Senior Code
 9 Enforcement Officers Hoffman and Cablk, and others, routinely use drones for this purpose
 10 throughout the County, which has violated the rights of dozens, if not hundreds, of
 11 landowners in the County. Although the policy states drones will not be used without a
 12 reasonable suspicion of a code violation, or to target or harass people, the policy also
 13 expressly states that drones "may be utilized for inspections of *private property to detect*
 14 *violations of the Sonoma County Code when other means and resources are not available*
 15 *or are less effective. The policy does not require that an inspection warrant first be obtained*
 16 *in order to use a drone to inspect private property. In fact, the County's official position is*
 17 *that an inspection warrant is not required by reason of the U.S. Supreme Court's decision*
 18 *in California v. Ciraolo, 467 U.S. 207 (1986).*

19 In July 2022, without seeking an inspection warrant and without exigent
 20 circumstances or consent, acting on behalf of the County, Hoffman and Cablk flew a drone
 21 over Cupp's private property and conducted an unauthorized inspection. On information
 22 and belief, the County has done so on other occasions more recently than July 2022, subject
 23 to further proof through discovery.

24 Cupp contends this use of drones violated his Constitutional rights under the

1 4th Amendment. Cupp contends the County is mistaken in relying on *Ciraolo*. Instead, the
2 use of drones, in the manner in which CED uses them (which includes peeping through
3 windows of structures on the intruded properties, flying them into open air greenhouses or
4 hoopouses trying to “detect” code violations, and hovering over persons’ heads is
5 distinguishable from a fixed wing aircraft flying in navigable airspace, the factual
6 circumstances of *Ciraolo*. Cupp contends the County’s warrantless use of drones pursuant
7 to its official policy violates the 4th Amendment, and the Court should rely on the holdings
8 of *Camara v. Municipal Court*, 387 U.S. 523 (1967) [inspection warrant required for code
9 enforcement officers]; *Kyllo v. U.S.*, 533 U.S. 27 (2001) [use of thermal imaging device even
10 from public space to determine presence of grow operation inside home requires a
11 warrant]; *U.S. v. Jones*, 565 U.S. 400 [use of tracking device to monitor suspect’s vehicle’s
12 movement on public streets requires a warrant]; *Florida v. Jardines*, 569 U.S. 1 [when
13 detectives bring drug sniffing dogs to a knock-and-talk at suspect’s home, a 4th Amendment
14 search occurs, necessitating a warrant]; *Carpenter v. U.S.*, 585 U.S. [slip opinion] (2018)
15 [warrantless search and seizure of cell phone records including records which show the
16 location and movement of the phone in public spaces violates the 4th Amendment].
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20 In using a drone to search Cupp’s private property in July 2022, and at any
21 time thereafter, Cupp contends that Hoffman and Cablk committed common law trespass
22 and invasion of Cupp’s privacy, intentionally inflicting emotional distress upon Cupp.
23

24 2. The foregoing conduct by Defendants, and each of them, has occurred, and
25 continues to occur, as a result of unconstitutional policies, practices, procedures, or an
26 ongoing pattern or course of conduct that is without just cause, arbitrary and capricious,
27 malicious, oppressive, disregards Cupp’s constitutional and state law rights, and arises
28 from an improper motive on the part of Defendants, and each of them, amounting to a

1 malevolent intent that is designed to, and has, vexed, harassed, annoyed, caused financial
2 and pecuniary harm or damage to Cupp, made it unreasonably difficult or impossible for
3 Cupp to complete actions to bring the subject property into compliance with rules,
4 ordinances, or regulations imposed on Cupp by Defendants, and has resulted from an
5 improper purpose intended to cast a cloud on Cupp's title to the subject property,
6 diminish the value of the subject property, interfere with Cupp's use of the subject
7 property, devalue the subject property, and cause or require Cupp to unnecessarily
8 expend large sums of money to comply with Defendants' demands as alleged herein.
9

10 II.

11 PARTIES, JURISDICTION & VENUE

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13 4. At all times relevant herein, Cupp was an individual who either resided at the
14 subject property; or was, and is, the owner of record of the subject property, and is
15 entitled to the full panoply of rights, privileges, and protections of the United States
16 Constitution, the California Constitution, California statutory law, and the common law.
17

18 5. Cupp is informed and believes, and thereon alleges, that Defendant TENNIS
19 WICK ("Wick") was, at all relevant times, a resident of Defendant COUNTY OF SONOMA
20 ("the County"), and at all relevant times, he was, and is, the Director of the Permit and
21 Resources Management Department (also known and referred to herein as "PRMD" or
22 "Permit Sonoma"), an official government agency within the County, and is, by reason of
23 the authority vested in him by the Sonoma County Code of Ordinances, Chapter 7, Art. I,
24 Sec. 7-2, "the Chief Building Official" for and on behalf of the County. Section 7-2 further
25 provides:
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“The chief building official shall be the director of the permit and resource management department or his or her designee. The chief building official shall supervise and be responsible for all inspection work required for the proper enforcement of regulations imposed by this chapter except those duties specifically delegated herein to the county public health officer. The chief building official shall perform related duties as directed by the board of supervisors. The chief building official shall appoint such deputies and assistants as may be authorized by the board of supervisors.”

(Ord. No. 5754 § 1 (b), 2007: Ord. No. 5399 § 1, 2003: Ord. No. 4906 § 3, 1995.) Wick is sued in his individual and official capacities.

6. Cupp is informed and believes, and thereon alleges, that Defendant TYRA HARRINGTON (“Harrington”) was, at all relevant times, a resident of Defendant COUNTY OF SONOMA (“County”), and that at all relevant times she was, and is, a Code Enforcement Manager, and is hereby sued in her individual and official capacities.

7. Cupp is informed and believes, and thereon alleges, that Defendant TODD HOFFMAN (“Hoffman”) was, at all relevant times, a resident of Defendant COUNTY OF SONOMA (“County”), and that he was, and is, a Code Enforcement Inspector II employed by County, and is hereby sued in his individual and official capacities.

8. Cupp is informed and believes, and thereon alleges, that Defendant JESSE CABLK (“Cablk”) was, at all relevant times, a resident of Defendant COUNTY OF SONOMA (“County”), and that he was, and is, a Senior Code Enforcement Inspector employed by County, and is hereby sued in his individual and official capacities.

9. Cupp is informed and believes, and thereon alleges, that Defendant COUNTY OF SONOMA was, at all relevant times, a municipal corporation that acted jointly with the other Defendants named herein, including DOES 1-50, inclusive, directly and indirectly, by establishing the unconstitutional policies or procedures complained of herein; or by instituting, approving, encouraging, or ratifying the patterns, practices, or courses of

1 conduct engaged in by the other Defendants named herein, including DOES 1-50,
2 inclusive, before, on and after February 15, 2019, as alleged herein.

3 10. Cupp sues each and all individual Defendants in their individual and personal
4 capacities, but also in their official capacities by reason of the fact each Defendant, at all
5 times alleged herein, was acting under color of law when engagin in, directing, ordering,
6 approving, ratifying or undertaking the wrongdoing complained of herein.

7
8 11. Cupp does not know the true names and capacities of those defendants sued
9 herein as DOES 1-50, inclusive, whether they be individuals, agents, representatives,
10 corporations, associates, partners, departments, subdivisions, or other business or
11 governmental entities, and therefore, Cupp sues these defendants by fictitious names.
12 Cupp is informed and believes, and thereon alleges, that each of these fictitiously named
13 defendants has harmed Cupp, or caused damage to Cupp, through varied intentional
14 Constitutional violations and deprivations, or they have violated state or common law, in
15 a manner that is equally reprehensible, outrageous, and vindictive as those Defendants
16 named herein. Cupp will seek leave to amend this Complaint to set forth the true names
17 and capacities of such defendants when the information is ascertained.
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20 12. Cupp is informed and believes, and thereon alleges, that each of the Defendants
21 named herein, including defendants sued herein as DOES 1-50, inclusive, in some legally
22 recognizable manner acted in concert with, as the agent of, employee, representative, or
23 assign of each of the other Defendants; or the conduct of the Defendants named herein,
24 including defendants sued herein as DOES 1-50, inclusive, was done at the behest of the
25 other Defendants, with their express or implied approval, encouragement, acquiescence,
26 or was ratified by the other Defendants, and each of them, after the fact.
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1 on the County's claim form. Cupp's August 4, 2020 claim makes no mention of drones
2 whatsoever, nor does it allege a "pattern and practice" of unconstitutional misconduct by
3 Defendants.

4
5 18. On August 29, 2022, realizing that the County had evidently misapprehended
6 the scope of Cupp's July 15, 2022 claim, Cupp submitted a clearly marked "Amended
7 Claim" – still well-within the 6-month time requirement – referencing the drone flyovers,
8 and alleging:

9 "…[S]uch conduct evidences and is indicative and representative of a
10 pattern, practice, or repeated course of conduct approved, authorized, or
11 ratified by County and other named officials acting in concert…"

12 Cupp also added a claim under the California constitution, Article I, Secs. 7 & 13 and
13 removed a claim made pursuant to Civil Code section 1708.8. Attached hereto as **Exhibit**
14 **C**, and incorporated herein, is a true and correct copy of Cupp's amended claim to the
15 County.

16
17 19. Both the July 15, 2022 claim and the August 29, 2022 amended claim were
18 personally delivered and stamped received by the County. Cupp's amended claim
19 contained different and additional allegations requiring a further response from the
20 County. The County had forty-five (45) days from August 29, 2022 to respond, which
21 would have been up to and including October 13, 2022. No agreement to extend that date
22 was made. To date, the County has not replied or otherwise even acknowledged Cupp's
23 amended claim. Thus, the amended claim was deemed rejected on October 14, 2022.

24
25 20. As a result, the County has waived any defense to untimeliness of Cupp's
26 amended claim. (Cal. Govt. Code §§ 911.3(b), 913). In addition, Cupp's statute of
27 limitations on his state law claims is thereby extended by two (2) years from the date of
28 accrual as stated in the amended claim, which was June 1, 2022, giving Cupp until June 1,

2024 to file suit on his state law claims. (Cal. Govt. Code, § 945.6.) Thus, Cupp brings suit for violation of his state constitutional, statutory and common law rights arising from the County’s warrantless use of drones, and other unconstitutional methods, to search his property within the statutorily prescribed time pursuant to California Government Code.

21. The remainder of Cupp’s counts as set forth herein arise under federal constitutional law and, thus, are not subject to California’s Government Tort Claim procedures.

IV.

FACTS COMMON TO ALL CAUSES OF ACTION

A. County Enacts Ordinance Authorizing “Code Enforcement Enhancement Program”

22. On March 27, 2017, under the moniker “Code Enforcement Enhancement Program” (“CEEP”), County Counsel (at the time, Bruce Goldstein) and Defendant Wick presented Agenda Item 26 to the County Board of Supervisors, which was approved. Attached hereto as ***Exhibit D***, and incorporated herein, is a true and correct copy of Agenda Item 26.

23. It was asserted in Agenda Item 26 that CEEP was needed to address Permit Sonoma staffing reductions that had occurred in previous years, which had allegedly led to a decrease in revenue generated by Permit Sonoma for the County.

24. Rather than being a “program” to hire more Code Enforcement Inspectors to address the alleged backlog of cases and revenue shortfall, CEEP proposed hiring one Code Enforcement Manager, which ultimately turned out to be Defendant Harrington, who on information and belief is a former Deputy Sheriff with the Sonoma County Sheriff’s Department.

25. According to CEEP, Defendant Harrington's mandate is "to oversee and coordinate violation remediation efforts to both increase cost recovery and reduce case backlog." (Exhibit D, "Recommended Actions," (A), page 1 of 8, emphasis added.) In other words, Defendant Harrington's job was, and is, to increase the revenue generated by Permit Sonoma for the County. Indeed, according to CEEP, 100% of Defendant Harrington's salary, which on information and belief was or is at least \$154,292 (as of 2018) or more in salary and benefits annually¹, was expected to be generated from increases in cost recovery. (Exhibit D, "Executive Summary," page 4 of 8; "Narrative Explanation of Fiscal Impacts," page 7 of 8, emphasis added.)

26. On information and belief, CEEP, which represents official County policy set into effect by the County Board of Supervisors, gave, and continues to give, a powerful incentive and motivation to Defendant Harrington to not only aggressively pursue "cost recovery" on behalf of the County herself, but to instigate, encourage, or mandate those working under her at PRMD, such as Defendants Franceschi, Hoffman, Smith, Cablk, and others, including DOES 1-50, to aggressively generate as much revenue as possible for the County. Indeed, the policy inasmuch encourages this by stating:

- "Aggressive code enforcement actions can also serve as an upstream investment..." (Exhibit D, "Executive Summary," page 1 of 8.)
- "...[T]his item recognizes the effectiveness of quick and aggressive litigation to resolve violations..." (Exhibit D, "Executive Summary, page 2 of 8.)
- "The decline in cases and corresponding decline in [cost] recovery is due to the elimination of the Division manager and reduction in staffing." (Exhibit D, "Discussion," page 3 of 8.)
- "The new manager position will facilitate the resolution of more complaints, as well as more Code Enforcement cases going to hearing, which together are expected to generate approximately \$600,000 per year in additional

¹ <https://calsalaries.com/tyra-harrington-4899625>.

1 cost recovery (\$12,000 per hearing with an additional 50 cases going to
2 hearing.” (Exhibit D, “Discussion,” page 4 of 8.)

3 27. Additionally, CEEP proposed what it called “a number of minor policy
4 modifications and delegations” and “policy modifications to increase effectiveness.”
5 (Exhibit D, “Executive Summary, page 2 of 8; “Discussion,” page 5 of 8.) What this
6 innocuous sounding phrase means is that the County Board of Supervisors delegated their
7 authority to “bypass the administrative process” and file a lawsuit to abate any violations.
8 This delegation of authority gave Defendant Wick, together with County Counsel, the
9 unfettered authority to declare property uses as constituting “an immediate threat to
10 public health and/or safety” with no guidance on to how they were to define these terms.

12 28. Furthermore, CEEP proposed to “streamline” the administrative hearing
13 process” by creating an “Administrative Citation Program.” In effect, this proposal, which
14 was also approved as official policy by the County’s Board of Supervisors, allowed Permit
15 Sonoma to simply bypass certain procedural steps the department had previously taken
16 when dealing with property owners, and instead, encouraged Permit Sonoma to
17 immediately cite property owners with violations and assess penalties of one kind or
18 another. Stated differently, this Administrative Citation Program conferred a virtually
19 unfettered right on the part of Defendants Wick and Harrington to speed up the cost
20 recovery process, and increase “citation fee revenue” while running roughshod over the
21 constitutional due process rights of property owners within the jurisdiction of the County.

24 29. On information and belief, CEEP was not fully implemented by the County
25 until late in 2018. In the interim, on the night of October 8, 2017, a historic wind event led
26 to one of the worst firestorms in Sonoma County history, followed by almost three weeks
27 of fire. In total, the Nuns, Tubbs, and Pocket Fires (together comprising the Sonoma
28 Complex Fire) burned over 110,700 acres in Sonoma and Napa counties. 24 lives were lost

as a result of the fires. 6,997 structures were destroyed, resulting in direct losses exceeding \$7.8 billion according to the California Insurance Commissioner. 25% of the destruction occurred on protected or open land in Sonoma County.² The cost to the County itself totaled at least \$18.1 million.³ On information and belief, a significant portion of the County's Code Enforcement efforts were either eased or diverted as a result of the Sonoma Complex Fires, or at least explains, in part, why CEEP's implementation was delayed until late in 2018.

B. Officer Smith Conducts Warrantless Search of the Subject Property on February 15, 2019

30. On February 15, 2019, amidst and pursuant to the enactment and implementation of these unconstitutional policies and procedures which had, and continue to have, the effect of encouraging overly aggressive and intrusive inspection and Code Enforcement actions on the part of officials working for Permit Sonoma, Code Enforcement Officer Andrew Smith - a subordinate Code Enforcement officer who was a trainee at the time, only on the job for a few months, and was working under the direct supervision of Defendants Harrington and Franceschi, entered onto the subject property without an inspection warrant based on a confidential complaint of unpermitted construction occurring at the subject property.

31. Officer Smith entered the subject property despite, admittedly, not having Cupp's consent or exigent circumstances, nor did Officer Smith have the consent of the

² "2017 Sonoma Complex Fires." <https://sonomavegmap.org/firestory/index.html>, accessed March 6, 2023.

³ Varian, Ethan & Callahan, Mary. "Initial wildfire costs reach \$18.1 million for Sonoma County." Press-Democrat: August 22, 2020. <https://www.pressdemocrat.com/article/news/live-updates-walbridge-fire-continues-to-grow-overnight/>, accessed March 6, 2023.

1 entity he mistakenly thought owned the subject property at the time, Federal National
2 Mortgage Association or “Fannie Mae.”

3 32. Officer Smith questioned a workman on the subject property at the time and
4 learned the owner was not present on the property. Rather than leave at that time, Officer
5 Smith proceeded to wander about the subject property, searching it, and taking
6 photographs.
7

8 33. As a result of this warrantless search, Smith issued two Notices and Orders
9 against Cupp for various violations of the Sonoma County Code, including unpermitted
10 construction, junkyard conditions, and occupancy violations (“the 2019 Citations”).
11 Attached hereto as ***Exhibit E***, and incorporated herein, are true and correct copies of the
12 2019 Citations that resulted from Officer Smith’s warrantless search of the subject
13 property. The 2019 Citations refer to Violation Nos. VCM19-0123, VPL19-0130, VBU19-
14 0076, VBU19-0077, and VBU19-0078.
15

16 34. This warrantless search by Smith is the subject of the related matter, *Cupp v.*
17 *Smith*, Case No. 4:20-CV-03456-PJH, and the citations that followed, were executed
18 pursuant to the unconstitutional policies and procedures promulgated by the County
19 through Agenda Item 26 and as applied as the County’s custom, practice and procedure.
20

21 **C. County Initiates Abatement Proceedings Based on Smith’s**
22 **Warrantless Search**

23 35. On April 19, 2019, Officer Smith sent two letters to Cupp entitled “Civil
24 Penalties Due and Payable.” According to these two letters, as of April 19, 2019, Cupp
25 owed a total of \$22,680 in civil penalties, which accrue at the rate of \$90/day per
26 violation. From these letters, it appears that Violation Nos. VBU19-0076, 0077, and 0078
27 are considered one violation; whereas, Violation No. VPL19-0130 is considered a second
28 violation, meaning that Cupp was incurring per diem civil penalties of \$180 as a result of

the 2019 Citations. Attached hereto as ***Exhibit F***, and incorporated herein, are true and correct copies of these letters. These letters refer back to the violation numbers listed on the 2019 Citations.

36. On May 13, 2019, *nearly one month later and prior to notice of an Abatement Hearing*, the County recorded two Notices of Abatement Proceedings against the subject property with the Sonoma County Assessor-Recorder's Office – Document No. 2019039697 and 2019039721 (“the Abatement Proceedings Notices”). The Abatement Proceedings Notices continue to encumber the subject property to the present day, casting a cloud on Cupp's title to the subject property. Attached hereto as ***Exhibit G***, and incorporated herein, are true and correct copies of the Abatement Proceedings Notices.

37. On August 28, 2019, *over two, additional months later*, the County mailed Cupp a Notice of Abatement Hearing (“the Hearing Notice”). Attached hereto as ***Exhibit H***, and incorporated herein, is a true and correct copy of the Hearing Notice. In the Hearing Notice, the County advised Cupp that he would be given the opportunity to have a hearing, call witnesses, and present evidence.

38. The Abatement Hearing did not commence until December 11, 2020, in part due to COVID-19 restrictions. Meanwhile, Cupp continued to incur civil penalties of at least \$180/per diem.

D. Permit Sonoma Comes Under Fire From Local Press for Over-Promising and Under-Delivering Through CEEP

39. On August 9, 2019, a local reporter, Tyler Silvy, authored an unflattering article in the Sonoma County Press-Democrat, accusing Defendant Wick as head of Permit Sonoma with over-promising and under-delivering through what started as the CEEP policy. Attached hereto as ***Exhibit I***, and incorporated herein, is a true and correct copy of Silvy's article downloaded from the Sonoma County Press-Democrat website.

40. According to the article, the program had been implemented for approximately one year, and only 2 administrative citations had been issued; yet, according to Silvy, the program had cost the County thousands of dollars. On information and belief, pressure from bad press such as Silvy's article also prompted Defendants and the County to step up their Code Enforcement activities, at whatever cost to the constitutional rights of property owners in the County.

E. County Promulgates Standard Operating Procedures on the Use of Unmanned Aircraft Systems (UAS) (a.k.a. "Drones")

41. Shortly afterwards, on or about September 10, 2019, the County, acting through Permit Sonoma, promulgated a five-page policy and procedure document entitled "7.0 Standard Operating Procedures on the Use of Unmanned Aircraft Systems (UAS) (i.e., "drones") ("the drone policy"). Attached hereto as **Exhibit J**, and incorporated herein, is a true and correct copy of the drone policy.

42. "UAS," or "Unmanned Aircraft Systems," is an acronym that is often associated with vehicles more commonly described as "drones." UAS refers to "an aircraft and its associated elements which are operated with no pilot on board."⁴ "Drones" are also frequently referred to as UAVs, or "Unmanned Aerial Vehicles."⁵ For simplicity and consistency herein, Cupp will continue to refer herein to such vehicles and systems primarily as "drones."

43. According to the United States Department of Defense, "drones" are categorized as follows⁶:

⁴ Nagel, Lauren. "Types of Drones and UAVs (2023)." January 19, 2023. <https://www.tytorobotics.com/blogs/articles/types-of-drones>.

⁵ *Ibid*.

⁶ Wikipedia. "Unmanned aerial vehicle." Footnotes 21, 22.

https://en.wikipedia.org/wiki/Unmanned_aerial_vehicle#cite_note-uavclassificationA-21, accessed March 6, 2023.

Group: ♦	Group 1 ♦	Group 2 ♦	Group 3 ♦	Group 4 ♦	Group 5 ♦
Size	Small	Medium	Large	Larger	Largest
Max take-off wt	< 20 lb (9.1 kg)	> 20 & < 55	> 55 & < 1320	>1,320 lb (600 kg)	>1,320 lb (600 kg)
Operating altitude	< 1,200 ft (370 m)	< 3,500 ft (1,100 m)	< 18,000 ft (5,500 m)	< 18,000 ft (5,500 m)	> 18,000 ft (5,500 m)
Speed	< 100 kn (190 km/h)	< 250 kn (460 km/h)	< 250 kn (460 km/h)	Any speed	Any speed

44. Drones can also be classified based on range and endurance, size, weight, altitude, and degree of autonomy. Some drones are remotely piloted aircraft, some offer intermediate degrees of autonomy, and some are fully autonomous.⁷ At this time, it is not known what category of drones the County has acquired for Permit Sonoma; only that it has acquired one or more drones, nor is it known specifically what capabilities these drones have. On information and belief, however, Permit Sonoma's drones are remotely controlled but may have some features that are semi-autonomous. On further information and belief, Permit Sonoma's drones have the ability to fly at altitudes that are above 400 feet and below 400 feet, take high-resolution digital photographs, and record high-resolution video footage. In all respects, Permit Sonoma's drones, when used to conduct inspection searches of private property, enhance the senses of Code Enforcement officers such as the Defendants beyond what an ordinary human is capable of, and as such, require a warrant prior to their use to inspect and search private property. (Florida v. Jardines, 569 U.S. 1, 133 S. Ct. 1409 (2013); Kyllo v. United States, 533 U.S. 27 (2001).)

45. The County's drone policy was authored, at least primarily, by Defendant Harrington, and Defendant Harrington also reviewed the drone policy. The drone policy

⁷ Wikipedia. "Unmanned Aerial vehicle." Footnote 24. https://en.wikipedia.org/wiki/Unmanned_aerial_vehicle#cite_note-uavclassificationA-21, accessed March 6, 2023.

1 was reviewed by County Counsel's office acting through Holly Rickett, who is not named
2 as a Defendant herein. Most importantly, however, the drone policy was approved by
3 Defendant Wick acting in his capacity as Permit Sonoma Director, evidencing Defendant
4 Wick's role as the policy-making official for the County's Permit & Resources
5 Management Department as further alleged herein.
6

7 46. The County operates one or more websites available to the public which discuss
8 a variety of topics related to the County's many activities and departments, including the
9 policies and procedures that apply to the operations of Permit Sonoma. Significantly,
10 however, the County did not publish its drone policy on the "Internet." Instead, the drone
11 policy was published solely on the "Intranet." Cupp alleges on information and belief that
12 the use of the word "Intranet" on page 4 of 5 of Exhibit F refers to the County's private
13 Intranet. An Intranet is a local, restricted communications network built using World
14 Wide Web software, which is available to limited numbers of individuals (typically a work
15 group or similar closed group) and not to members of the general public.⁸
16

17 47. On information and belief, Cupp alleges the County and Defendants Wick and
18 Harrington deliberately chose not to publish its new drone policy on the Internet in order
19 to keep the drone policy, and Permit Sonoma's use of drones to conduct warrantless
20 searches of private property based on the drone policy, secret from the people of the
21 County of Sonoma.
22

23 48. On information and belief, at or about the same time, Permit Sonoma executed
24 a contract with a private drone operator to conduct aerial surveillance over private
25 properties in the County of Sonoma through the use of drones. Attached hereto as
26
27
28

⁸Berry, Louise. "Intranet v. internet: what's the difference, and why does it matter? Interact: November 13, 2019.
<https://bit.ly/3WgoTbi>, accessed December 15, 2022.

1 **Exhibit K**, and incorporated herein, is a true and correct copy of an exhibit to that
2 contract, entitled “Exhibit A: Scope of Work – Services to be Provided.” On information
3 and belief, this contract was awarded to an individual named Anthony Cinquini
4 (“Cinquini”). At this time, it is not known whether Mr. Cinquini ever operated a drone to
5 search the subject property; thus, he is not named as a defendant herein. Cupp reserves
6 the right to amend this Complaint, however, should discovery reveal Cinquini was
7 involved in such activities, as Cupp may have additional rights and remedies against
8 Cinquini.
9

10
11 49. On information and belief, this contract for a drone operator was not opened
12 for public bidding because, once again, Defendants desired to keep the drone-related
13 activities of Permit Sonoma, including the contract referencing the Scope of Work, secret
14 from the people of the County of Sonoma.

15 50. The County’s drone policy and Scope of Work were promulgated prior to a
16 warrantless drone search of the subject property that occurred on March 27, 2020, which
17 is alleged in further detail below. Thus, the warrantless drone search of the subject
18 property in March 2020 occurred pursuant to and was guided by the County’s drone
19 policy. On information and belief, the March 27, 2020 warrantless use of a drone to
20 search the subject property was conducted by Defendants Hoffman and Cablk, acting
21 pursuant to the County’s drone policy, which was, itself, promulgated as part of Agenda
22 Item 26 approved by the County’s Board of Supervisors, and Defendants Hoffman and
23 Cablk were acting at the direction and under the supervision of the remaining Defendants,
24 and each of them, or these Defendants ratified Defendants Hoffman and Cablk’s
25 unconstitutional actions after they were committed.
26
27
28

1 51. Under its terms, on pages 1-2 of 5, the County's drone policy provides, in
 2 pertinent part:

3 "Approved Use: Approved Permit Sonoma uses of a UAS include
 4 investigations of complaints received about alleged violations of the Sonoma
 5 County Code. These inspections of unpermitted and/or illegal land uses
 6 include, but are not limited to violations of zoning regulations, such as
 7 cannabis cultivation non-operative motor vehicle storage yards, and
 8 junkyard conditions. A UAS may also be employed for complaints and/or
 9 investigations alleging unpermitted construction, grading, and drainage
 10 improvements/obstructions....

11 Prohibited Use: The UAS video surveillance equipment shall not be used: to
 12 conduct surveillance or inspection activity without a reasonable suspicion of
 13 unpermitted or illegal actions; to target people; to harass, intimidate, or
 14 discriminate against any individual or group; or to conduct personal
 15 business of any type....

16 GENERAL

17 Small unmanned aircraft systems (UAS) may be utilized for inspections of
 18 private property to detect violations of the Sonoma County Code when other
 19 means and resources are not available or are less effective. Permit Sonoma
 20 shall make every attempt to respect and observe existing privacy rights on
 21 private property. Permit Sonoma shall only conduct UAS take-offs and
 22 landings from public property or public right of way...

23 Permit Sonoma's use of UAS shall focus primarily on expanses of land (e.g.,
 24 "open fields") in which private property owners have knowingly exposed
 25 unpermitted structures and uses to aerial vantage points. While a Permit
 26 Sonoma UAS pilot is operating a UAS they will take steps necessary to
 27 protect privacy and private property rights by (1) turning on photographic
 28 equipment only when the UAS is positioned close to the suspected violation
 or unpermitted use; (2) launch UAS as close to the suspected unpermitted
 property and/or property use as possible to limit potential exposure to other
 properties; (3) ensure all UAS recording devices are focused on the areas
 necessary to support the mission and to minimize the inadvertent collection
 of data about persons or uninvolved places. Any inadvertently collected data
 will be immediately destroyed upon review by the Code Enforcement
 Manager or Supervisor.

Permit Sonoma will conduct UAS aided inspections on properties where
 Permit Sonoma staff has reason to believe unpermitted building or illegal
 land use violations are occurring. Reasonable suspicion will be based on
 citizen complaints and/or staff observations coupled with any other facts
 that suggest violation of the Sonoma County Code.

Data Retention and Processing

1 All UAS recorded data shall be reviewed and evaluated for evidentiary value
 2 by the Code Enforcement Manager or Supervisor. Data of identifiable
 3 individuals not intended to be used as evidence shall not be retained. All
 4 retained data shall be maintained or destroyed pursuant to County retention
 5 policies....

6 All UAS flights must be pre-approved by the Code Enforcement Manager or
 7 Supervisor and will be reviewed by the Code Enforcement Manager or
 8 Supervisor to ensure that they are conducted in accordance with Permit
 9 Sonoma policy, FAA regulations, state and federal law, and with due regard
 10 for public privacy.”

11 52. On information and belief, at all relevant times, the Code Enforcement
 12 Manager referred to in the County’s drone policy was, and is, Defendant Harrington, and
 13 the Supervisor referred to in the County’s drone policy was, and is, Defendant Franceschi.

14 53. Additionally, the Scope of Work states, in pertinent part:

15 “Contractor shall only gather aerial data upon receipt of written
 16 authorization from either a Senior Code Enforcement Inspector, the Code
 17 Enforcement Supervisor or the Code Enforcement Manager of Permit
 18 Sonoma....

19 Contractor shall accompany a written summary for each request that
 20 includes the name and contact information of the employee that collected
 21 the data ,the date the data was collected, clearly outlined parcel and address
 22 information as well as detailed GPS coordinates and any other information
 23 for the County to understand the data location and scope....

24 Contractor shall comply with all laws, statutes, ordinances and regulations
 25 as they may be amended from time to time...”

26 54. Whether by the drone policy or private contract, the County does not have the
 27 authority to promulgate policies and procedures authorizing nonconsensual inspections
 28 of private property absent an administrative warrant. (Marshall v. Barlow’s, Inc., 436 U.S.
 307, 324 (1978) [striking down OSHA’s warrantless inspection scheme finding it
 “unconstitutional insofar as it purports to authorize inspections without warrant.”].)

55. As alleged in greater detail herein, neither the drone policy nor the Scope of
 Work represent adequate substitutes for the constitutional safeguards afforded by the

Fourth Amendment to protect the civil rights of property owners in the County, including Cupp. Taken together, these documents – which represent official County policy applied and put into official action - delegate the manner, method and operation of the use of drones to search private property to the unfettered discretion of those County officials engaged in the warrantless search. (See De La Cruz v. Quackenbush, 80 Cal.App.4th 775, 789-790 (2000) [“the regulatory scheme at issue does not provide an adequate substitute for a warrant because it has neither a ‘properly defined scope’ nor a ‘limit on the discretion of the officers.’”])

56. What is most noticeable, however, is not so much what is stated in these documents; rather, it is what is not stated. Nowhere in either the County’s drone policy or the Scope of Work is the word “warrant” even mentioned, much less are there any directives (or even encouragements) for Permit Sonoma officials to obtain a warrant before using drones to conduct nonconsensual, non-exigent searches of private property.

57. In short, these documents, at best, impose only the vaguest limitations on the discretion of County officials when conducting drone searches of private property resulting in the proverbial “fox guarding the hen house.” The net result is the violation of the constitutional rights of Cupp and other property owners within the County’s jurisdiction.

F. On March 27, 2020, Defendants Cablk and Hoffman Fly a Drone Over the Subject Property Without a Warrant, and Without Cupp’s Consent or Exigent Circumstances

58. On information and belief, on March 27, 2020, *over one year after Officer Smith conducted his warrantless search of the subject property*, Defendants Cablk and Hoffman, acting pursuant to and in accordance with the County’s drone policy and the other documents referred to herein, flew a drone over the subject property, conducting a

1 search of the subject property, without first seeking an inspection warrant, and did so in
2 their official capacities acting under color of law.

3
4 59. At the time Defendants Cablk and Hoffman engaged in this warrantless search
5 of the subject property, neither individual had Cupp's consent to conduct the search. In
6 addition, they lacked exigent circumstances or any substantial legal justification
7 whatsoever for conducting the drone flyover other than simply to snoop and spy on the
8 subject property.

9 **G. *Cupp v. Smith*, Case No. 4:20-cv-03456 PJH**

10 60. On May 21, 2020, Cupp filed suit in *Cupp v. Smith*, Case No. 4:20-cv-03456
11 PJH, which is a related case.

12
13 **F. On July 20, 2020, the Sonoma Superior Court Issues an Inspection**
14 **Warrant Based on a False Affidavit of Probable Cause Executed by**
15 **Defendant Hoffman**

16 61. For unknown reasons, on July 20, 2020, one year and six months after Officer
17 Smith conducted his warrantless search of the subject property, and nearly four months
18 after Defendants Cablk and Hoffman conducted the warrantless drone flyover,
19 Defendants finally sought the issuance of an inspection warrant from the Sonoma
20 Superior Court that, if it had been valid, would legally allow Defendants to search the
21 subject property.

22 62. The fact Defendants waited so long to seek an inspection warrant demonstrates
23 a lack of exigency to justify their warrantless searches of the subject property in the first
24 place. Moreover, throughout all this delay, Cupp continued to accrue per diem penalties
25 on the 2019 Citations of at least \$180.

26
27 63. To support the application for an inspection warrant for the subject property,
28 Defendant Hoffman submitted a Declaration of Todd Hoffman in Support of Ex Parte

1 Application for Inspection Warrant (“Declaration”) in his official capacity as an employee
2 of the County and, specifically, Permit Sonoma. Attached hereto as **Exhibit L**, and
3 incorporated herein, is a true and correct copy of Defendant Hoffman’s Declaration.
4

5 64. After a recitation of his qualifications, Defendant Hoffman states, “I possess
6 first-hand knowledge of the matters stated herein and if called to testify as a witness, I
7 could and would testify competently thereto.” (Exhibit K, Declaration, ¶ 15.)
8

9 65. However, Defendant Hoffman’s Declaration describes Officer Smith’s efforts to
10 inspect the subject property in 2019, stating:

11 “Code Inspector A. Smith attempted to access the property in response to a
12 complaint regarding multiple violations. Inspector Smith was prevented
13 from accessing the property by the fence and gate. From the right of way, he
14 observed numerous violations...”

15 (Exhibit L, page 6 of 12, par. 19.)
16

17 66. This statement by Hoffman was false. Yet, it was submitted in support of the
18 application for an inspection warrant under penalty of perjury. Defendant Hoffman was
19 not present when Defendant Smith attempted to access the subject property, so there is
20 no way he could have first-hand knowledge of what did or did not happen, or what
21 Defendant Smith could or could not have observed when Smith went to the subject
22 property on February 15, 2019. Throughout the disputes between the County and Cupp
23 over the subject property, particularly in the *Cupp v. Smith* matter, Defendants have
24 accused Cupp of erecting a 9-foot fence around the subject property. This is the very fence
25 that blocked Defendant Smith from accessing the property. The alleged 9-foot fence is a
26 solid, wooden fence, a fact left out of Defendant Hoffman’s Declaration. Yet, somehow,
27 Defendant Hoffman claimed he had first-hand knowledge that Defendant Smith was able
28 to observe violations occurring on the property through this solid, wooden fence.

1 Defendant Smith would have needed x-ray vision, and Hoffman would have needed
2 psychic powers, for this sworn statement to be true.

3 67. Most striking of all, however, is the omission of any mention to the Superior
4 Court Judge that, in fact, Defendant Smith had already accessed the subject property
5 without an inspection warrant at the time the warrant was sought, which is how he was
6 able to observe any condition of the subject property. This fact is not reasonably in
7 dispute in the *Cupp v. Smith* matter.

9 68. Defendant Hoffman also discussed “an analysis of available chronological
10 satellite imagery,” which he avers informed him that several structures had been altered
11 in various ways. (Exhibit K, Declaration, page 8 of 12, par. 20.) In the very next paragraph
12 of the Declaration, Defendant Hoffman refers to “aerial imagery obtained on March 27,
13 2020,” which Defendant Hoffman refers to as being “Exhibits E1 & E2” to his Declaration.
14 This imagery, Hoffman declares, indicated to him not only that unpermitted construction
15 was occurring on the subject property, but also that the subject property was being used
16 as an illicit cannabis grow operation. Attached hereto as **Exhibit M**, and incorporated
17 herein, are true and correct copies of Exhibits E1 & E2 to Defendant Hoffman’s
18 Declaration.
19
20

21 69. At no point does Defendant Hoffman explain to the Court where he obtained
22 any of these photos, only stating they were from “aerial imagery” immediately after
23 referring to photos he obtained from “satellite imagery.” The implication of this omission
24 is that all the photos attached to the Declaration were obtained from imagery supplied by
25 a publicly available source such as Google Earth, etc., which would not require a warrant;
26 when in fact, the photos in Exhibit M represent photos obtained from the warrantless
27
28

1 drone search of the subject property conducted on March 27, 2020, a search Cupp
2 contends did require a warrant that Defendants did not possess at that time.

3 70. Based on Defendant Hoffman's false and misleading Declaration, Superior
4 Court Judge Shelley Averill issued an inspection warrant on July 20, 2022 without notice
5 to Cupp that allowed for forcible entry onto the subject property in the company of law
6 enforcement. Attached hereto as ***Exhibit N***, and incorporated herein, is a true and
7 correct copy of the inspection warrant issued by Judge Averill pursuant to Defendant
8 Hoffman's perjurious and misleading Declaration.
9

10 71. The case – Sonoma Superior Court Case No. SCV-266746 – was, thereafter,
11 immediately closed, giving Cupp no reasonable means or opportunity to appear and
12 challenge the issuance of the warrant or any of the detrimental effects that resulted from
13 it.
14

15 **G. On July 30, 2020, Defendants Harrington, Hoffman, Smith, and Five**
16 **Other County Officers, Including Law Enforcement, Enter Onto the**
17 **Subject Property Pursuant to the Inspection Warrant**

18 72. Despite Defendant Hoffman's concern that the subject property was being used
19 as an illicit cannabis grow operation, and despite his assertions of property owners being
20 able to rapidly remove evidence of a grow operation – all facts that were intended to cause
21 Judge Averill to issue an inspection warrant executable without notice to Cupp, allowing
22 forcible entry, and in the company of law enforcement – Defendants still waited an
23 additional ten days before taking any action to enter the subject property to abate any
24 alleged Code violations.
25

26 73. On July 30, 2020, Defendants Harrington, Hoffman, Smith, and on
27 information and belief, at least five, additional County officers, some of whom on
28 information and belief were employed by the Sonoma County Sheriff's Department and

1 other County agencies, acting pursuant to the inspection warrant issued on July 20, 2022,
2 entered upon the subject property. The operation was led by Defendant Harrington as the
3 senior Code Enforcement officer acting in her official capacity. Once upon the subject
4 property, Defendants and others broke down doors, entered the structures on the subject
5 property, and inflicted other physical damages to the subject property, all acting under
6 color of law.

7
8 74. Based on the July 30, 2020 inspection - or more accurately, raid - of the subject
9 property, Defendants issued seven, separate Notices and Orders. Of those seven Notices
10 and Orders, four generally allege “construction without permits,” two were for “unlawful
11 uses,” and one was for “a dangerous building,” which pertained to a barn on the subject
12 property. The remainder were violations related to the alleged presence of hemp at the
13 subject property.

14
15 **H. On July 31, 2020, in *Cupp v. Smith*, the Court Ordered Defendants**
16 **Not to Shut Off PG&E Services to the Subject Property Until After**
17 **Resolution of Cupp’s Application for TRO**

18 75. In *Cupp v. Smith*, Cupp sought a TRO to preserve the status quo of the dispute
19 involving the subject property. The Court set a briefing schedule and ordered Defendants
20 not to remove PG&E services (i.e., electricity and gas) from the subject property until after
21 the Court had resolved Cupp’s application for a TRO.

22 76. Although Defendants technically complied with the Court’s order, the day after
23 the Court denied Cupp’s application for a TRO, Defendants removed two electrical and
24 one gas meter from the subject property. One electrical meter supplied electricity to the
25 barn on the subject property. The other two meters supplied power to the residence on the
26 subject property, which was located at least 50 yards from the barn and had not been
27 deemed a “dangerous building” as a result of the July 30, 2022 raid. Defendants had no
28

1 reasonable basis for removing the meters from the residence, and in fact, did so on
2 information and belief as a form of punishment because Cupp had sought a TRO in *Cupp*
3 *v. Smith*.

4
5 77. The subject property was left without PG&E services for nineteen (19) months
6 thereafter. PG&E services were not restored until the day after the Court denied
7 Defendant Smith's motion for summary judgment in *Cupp v. Smith*. On information and
8 belief, Deputy County Counsel Michael King, who represents Smith in the *Cupp v. Smith*
9 matter, personally telephoned PG&E and instructed the utility to restore power at the
10 subject property the day after Smith's motion for summary judgment was denied. This is
11 based on the fact that a PG&E official contacted Cupp, confused, and asking who King was
12 and why he called PG&E. However, because of Defendants' actions or inactions, gas
13 services were still not restored at the subject property.
14

15 78. Consequently, for many months, the residence at the subject property was
16 rendered uninhabitable, causing significant harm and damage to Cupp personally and
17 financially.
18

19 **I. On December 11, 2020 and January 18 & 22, 2021, the County Proceeds**
20 **With the Administrative Abatement Hearing Against Cupp**

21 79. Finally, over a year after it was first noticed, the County proceeded with the
22 Abatement Hearing against Cupp. With regard to the 2019 Citations, the County argued
23 that Cupp never timely appealed those citations, so they were conclusive evidence of the
24 penalties against him. However, County Counsel Michael King had argued in the County's
25 12(b)(6) motion to dismiss in *Cupp v. Smith*, which the Court relied on, in part, in
26 dismissing Cupp's due process claim as moot and granting Defendant Smith's motion in
27 that case:
28

1 “Defendant’s filed their further reply...[and] In it, they stated they would
2 provide plaintiff [Cupp] an administrative hearing to challenge the citations
3 issued on February 19, 2019.”

4 The Court went on to state regarding Cupp’s claim for deprivation of due process:

5 “In any event, because Sonoma County has agreed to provide plaintiff an
6 administrative hearing to challenge the underlying February
7 19...citations...any claim premised on the denial of such a claim [of
8 deprivation of due process] appears moot.

9 (Order Granting Motion to Dismiss and Denying Motion to Disqualify Counsel,” p. 16, fn
10 4.)

11 80. In other words, the County said one thing to the Court to obtain a favorable
12 ruling on their Motion to Dismiss in *Cupp v. Smith*, but then attempted to do the exact
13 opposite when the time came for Cupp’s administrative hearing. This is further proof of the
14 County’s punitive stance with respect to Cupp, and the extent of their arbitrary and
15 capricious behavior.

16 81. In addition, at the administrative hearing, the County’s only evidence against
17 Cupp on either the 2019 or 2020 Citations pertained to evidence gathered during
18 Defendant Smith’s warrantless search on February 15, 2019 or the July 30, 2020 raid of the
19 subject property, which Cupp contends was executed based on a false and misleading
20 Declaration signed and submitted to the Superior Court by Defendant Hoffman pursuant
21 to the County’s official policies, practices and procedures as further alleged herein.

22
23 **J. On June 1, 2022, Defendants Cablk and Hoffman Fly a Drone Over the**
24 **Subject Property, Again Without a Warrant, Cupp’s Consent, or Exigent**
25 **Circumstances, and After Fact Discovery Had Closed in *Cupp v. Smith***

26 82. On May 25, 2022, the parties in the *Cupp v. Smith* matter participated in a
27 Magistrate Settlement Conference with the Hon. Mag. Judge Kandis Westmore. Mag.
28 Judge Westmore adjourned the May 25, 2022 conference and ordered the parties to
reconvene on August 5, 2022.

83. Fact discovery in *Cupp v. Smith* closed on January 24, 2022 pursuant to the Court's Scheduling Order. No agreement to extend this date was made, nor was the date extended by the Court.

84. On June 1, 2022, and on information and belief, Defendants Cablk and Hoffman, again, flew a drone over the subject property, once again without a warrant, without Cupp's consent, and without exigent circumstances, all while acting pursuant to the County's official policies, practices, customs and procedures, in their official capacities, acting under color of law.

K. Pursuant to the County's Drone Policy, Defendants Routinely Fly Drones Over Private Properties, Conducting Searches, Without Ever First Obtaining Warrants, and in Violation of FAA Regulations

(1) The FAA Regulates the County's Use of Drones

85. The Federal Aviation Administration has promulgated regulations for the community and recreational use of drones, which apply to the County's use of drones as alleged herein. These regulations can be found at 14 C.F.R. Part 107 and are collectively referred to as the "Part 107" rules.

86. Among other restrictions and requirements, including but not limited to testing, certification, and reporting requirements, as an operator of drones that presumably would be categorized as "small unmanned aircraft" (meaning they weigh less than 55 pounds), the County is prohibited from flying a drone higher than 400 feet above the ground unless operating in the vicinity of an airport in which case the height requirements differ (but are not relevant at this time for purposes of this lawsuit). 14 C.F.R. § 107.51(b).

87. In addition, the County is prohibited from operating a drone over any human being unless (a) "the operation is within or over a closed- or restricted-access site and all human beings located within the closed- or restricted-access site must be on notice that a

1 small unmanned aircraft may fly over them;" or (b) the small aircraft does not maintain
2 sustained flight over any human being unless the human being is "directly participating in
3 the operation of the small unmanned aircraft;" or the human being is "located under a
4 covered structure or inside a stationary vehicle that can provide reasonable protection from
5 a falling small unmanned aircraft." 14 C.F.R. § 107.125.
6

7 88. Despite these regulations (and others which on information and belief, the
8 County does not follow), and in addition to its policies as alleged herein, the County –
9 through Permit Sonoma and the individual Defendants, including DOES 1-50, maintain a
10 custom, practice and procedure of routinely using drones to inspect and search private
11 property of the residents of the County, without obtaining a warrant beforehand, and in
12 disregard of the FAA regulations.
13

14 89. Specifically, the County routinely takes the official position publicly in cases
15 brought by residents against the County, or by the County against its residents, in Superior
16 Court filings, that the County or its Permit Sonoma officials do not need a warrant to inspect
17 private property because they operate their drones in "navigable airspace," relying on
18 California v. Ciraolo, 476 U.S. 207 (1986). Not only does Ciraolo not involve the use of
19 drones, but the County's public position admits it routinely violates FAA regulations in its
20 use of drones to inspect private property.
21

22 90. According to FAA regulations, "navigable airspace" is defined as "airspace at and
23 above the *minimum flight altitudes* prescribed by or under this chapter, including airspace
24 needed for safe takeoff and landing." 14 C.F.R. § 1.1. For airplanes, the minimum flight
25 altitude while flying over congested areas or open air assemblies of persons is 1,000 feet
26 above the highest obstacle within a horizontal radius of 2,000 feet. 14 C.F.R. § 91.119(b). If
27 the County's public position in its state court filings is true and not misleading the judicial
28

officers of the County, then the County, Permit Sonoma, and these Defendants have a policy, custom, practice or procedure of operating drones as high as 1,000 feet above the ground, which would not require a warrant. However, as alleged above, drones are not permitted to fly that high without violating FAA regulations.

91. In truth, the County's stated position appears to depend on the issues at stake. Where the issue is one alleging the lack of a warrant to conduct an inspection, the County asserts its Permit Sonoma officials fly their drones in navigable airspace; no warrant is needed. When other issues are raised, the County takes the position that its actions comply with federal regulations. Respectfully, the County cannot have it both ways.

(2) The Unconstitutional Wrongs Committed Against Cupp by Defendants are not Part of Some Isolated Case

92. Cupp has obtained sworn statements from six (6) residents of the County of Sonoma attesting to the County's use of drones without warrants to search their property, in a manner prohibited by one or more FAA regulations. Attached hereto as **Exhibits O(A).1-(A)6** are true and correct copies of Declarations obtained by Cupp.

93. In addition, Cupp has interviewed through his counsel at least three (3), additional individuals who have been subjected to similar drone-related behavior, warrantless searches of their private property, due process violations, and other violations of federal and state statutory and constitutional protections by the County. These individuals have identified or can identify as many as twenty (20) more individuals with the same or similar experiences as alleged herein, involving warrantless searches of their private property and the use of drones to conduct aerial surveillance of their property. In the coming weeks, Cupp will come forward with additional proof of these allegations in the form of Declarations and additional actions, and respectfully requests the Court grant leave at an appropriate time to supplement these allegations and conduct discovery to bear them

1 out. In many instances, residents of the County have expressed sincere fear of reprisal by
2 the County as well as these individuals Defendants, specifically.

3 94. In at least one instance, a resident of the County recounted how the resident was
4 threatened with additional, punitive and more expensive Code violations by Defendant
5 Hoffman when the resident confronted Defendant Hoffman on the resident's private
6 property, which Defendant Hoffman (who at the time had a shaved head and visible tatoos,
7 leading the resident to believe he was an intruder) had entered the resident's property
8 without a warrant and conducted a search without consent or exigent circumstances.
9

10 95. When the resident ordered Defendant Hoffman off the property, Defendant
11 Hoffman threatened her, "Well, now, I am just getting started with violating you." That
12 resident has now been on the receiving end of some tens of thousands of dollars in alleged
13 Code violations and penalties by the County and, specifically, these Defendants, and is in
14 danger of losing her property outright as a result of Defendants' actions, which have been
15 undertaken in furtherance of unconstitutional policies and constitute an arbitrary and
16 capricious, punitive pattern of behavior, custom and practices.
17

18 96. Understandably, individuals confronting this situation are fearful of the
19 repercussions they may experience by coming forward. Some will overcome this fear; some
20 will not. However, in all but one situation interviewed thus far, the prohibited and
21 unconstitutional conduct involves the same cast of characters – the Defendants that are
22 named in this lawsuit, always acting under color of law of their public offices or employment
23 with the County, and pursuant to the County's unconstitutional policies, practices, customs
24 and procedures as alleged herein and as will be subject to supplementation and amendment
25 as further investigation and discovery is conducted, at the Court's discretion.
26
27
28

1 97. Indeed, it appears nearly impossible to determine precisely how many instances
2 exist where the County, Permit Sonoma, and these Defendants have conducted inspections
3 of private property without a warrant, conducted aerial surveillance of private property
4 without a warrant, applied for inspection warrants after the fact using the same or similar
5 false allegations like those used against Cupp as alleged herein, and generally deprived
6 residents of their constitutional rights to enjoy private property free from the government's
7 prying eyes.

8
9 98. On June 24, 2022, through his counsel, Cupp issued a California Public Records
10 Act ("PRA") request to the County seeking a number of documents and records pertaining
11 to this question, including but not limited to warrantless searches of private property in the
12 County, the use of drones to accomplish aerial surveillance, and other similar documents
13 and records. To date, the County has only partially complied with Cupp's request, with
14 County Counsel's office complaining the County cannot comply because their records are
15 not kept in the manner requested. However, the County has done nothing to identify or
16 assist Cupp in properly wording a request for the records, which is expressly required by the
17 PRA.
18
19

20 99. In addition, despite an exhaustive search of the Sonoma County Superior Court's
21 online case records, no court records of applications for inspection warrants can be
22 identified without first knowing a case number, property address or defendant's identity. In
23 other words, one cannot look up such cases by reference to the County of Sonoma, Permit
24 Sonoma, or Permit Resources Management Department as the party applying for an
25 inspection warrant.
26

27 100. Thus, at this time, it is not known how many times the County has applied for
28 inspection warrants, whether the application was before or after a warrantless search had

1 already been conducted, or to review what evidentiary support was submitted in support of
2 the issuance of the inspection warrants. On information and belief, based on representations
3 made by County Counsel, there must be many such instances. When asked to produce this
4 information as part of Cupp's PRA Request, the County indicated that this request would
5 require thousands of hours of personnel research and cost Cupp a tremendous amount of
6 money because, again and allegedly, the County does not keep track of their inspection
7 warrants by case number or property address. Yet, to date, the County has not identified
8 how it keeps its records, whether it keeps records, how many hours would be required to
9 locate the records, or how much Cupp would be charged for this information.
10

11
12 101. One of the individuals interviewed by Cupp's counsel thus far had a Declaration
13 submitted to the Court by Defendant Hoffman that was nearly identical to the one used
14 against Cupp, particularly with reference to the use of "aerial imagery" as alleged herein, and
15 which was, itself, a "cut and paste" job bearing the wrong name of the defendant, evidencing
16 that the Declaration used by Hoffman is recycled again and again, case-by-case. Thus, on
17 information and belief, Cupp's situation as alleged herein is not an isolated one; rather, it is
18 activity undertaken under color of law pursuant to an unconstitutional policy, a policy that
19 (while facially constitutional) was adopted for an improper motive; i.e., to the County's Code
20 Enforcement regime as a money-making venture for the County; and/or it is activity
21 undertaken as part of an unconstitutional practice, custom or procedure.
22

23
24 102. The smokescreen thrown up by the County is but one more example of the
25 County's efforts to conceal the unconstitutional policies and their wrongful and
26 unconstitutional, practices, customs and procedures as alleged herein. Other instances of
27 the same or similar activity engaged in by these Defendants, acting under color of law on
28 behalf of the County, are relevant proof of an unconstitutional practice, custom or procedure

sufficient for a finding of liability under *Monell v. Dep't. of Soc. Sv'cs.*, 436 U.S. 658 (1978).
See, e.g., Price v. Sery, 513 F.3d 962 (9th Cir. 2008) [facially constitutional policy did not
 exonerate public entity from Monell liability where actual practice was unconstitutional use
 of excessive force]; *Gregory v. City of Louisville*, 444 F.3d 725 (6th Cir. 2006); *Cash v.*
Hamilton County Dept. of Adult Probation, 388 F.3d 539 (6th Cir. 2004).

V.

COUNT ONE

(42 U.S.C. § 1983 – VIOLATION OF FOURTH and FOURTEENTH AMENDMENTS)

(Against All Defendants)

103. Cupp realleges each and every allegation contained in this Complaint and
 incorporates them as if set forth in full in Count One of this Complaint.

104. The Fourth Amendment to the U.S. Constitution provides:

*“The right of the people to be secure in their persons, houses, papers, and
 effects, against unreasonable searches and seizures, shall not be violated;
 and no Warrants shall issue but upon probable cause, supported by Oath
 or affirmation, and particularly describing the place to be searched, and
 the persons or things to be seized.”*

105. By doing the acts complained of herein, Defendants, and each of them, acting
 under color of law, county ordinances, regulations, official policies or procedures, or
 customs and practices, in violation of 42 U.S.C. § 1983, have deprived Cupp, and continue
 to deprive Cupp, of the right against unreasonable searches of the subject property as
 guaranteed by the Fourth Amendment.

106. Defendants violated Cupp's right to be free from unreasonable searches under
 the Fourth Amendment by, among other things:

1 (A) Conducting a search of the subject property using a drone on or about
2 March 27, 2020, without an inspection warrant, and without Cupp's consent and without
3 exigent circumstances;

4 (B) Conducting another search of the subject property using a drone on or
5 about June 1, 2022, again without a warrant, and without Cupp's consent and without
6 exigent circumstances;

7
8 107. At the time Defendants undertook the above-referenced conduct, their acts
9 and omissions as alleged herein are indicative and representative of unconstitutional
10 policies promulgated by the County and/or a repeated course of conduct by Defendants,
11 and each of them, in unconstitutionally enforcing the County's policies, which is
12 tantamount to a custom, practice or procedure of the County and its agency, Permit
13 Sonoma, of condoning and encouraging the disregard of the constitutional rights of the
14 residents of the County, as alleged herein.

15
16 108. As a direct and proximate result of Defendants' illegal conduct, Cupp has
17 suffered actual injuries and damages to his person, including general damages, as well as
18 financial and pecuniary damages to the subject property in an amount according to proof
19 at trial.
20

21 **WHEREFORE, Cupp prays for Judgment as set forth below.**

22 **COUNT TWO**

23 **(VIOLATION OF 42 U.S.C. § 1983 – VIOLATION OF EIGHTH AND**
24 **FOURTEENTH AMENDMENTS)**

25 **(Against All Defendants)**

26
27 109. Cupp realleges each and every allegation contained in this Complaint and
28 incorporates them as if set forth in full in Count Two of this Complaint.

110. The Eighth Amendment to the U.S. Constitution provides, in part:

1 *“Excessive bail shall not be required, nor excessive fines imposed, nor cruel*
2 *and unusual punishments inflicted..”*

3 110. In doing the acts complained of herein, Defendants, and each of them, did
4 impose, and continue to impose, excessive fines and penalties against Cupp in violation of
5 the Eighth Amendment, which is a violation of 42 U.S.C. Section 1983, and is made
6 applicable to the states through the Fourteenth Amendment as held in *Timbs*; and is
7 further made applicable to municipal fines as held in *Pimentel*, as alleged in more detail
8 herein.
9

10 111. At the time Defendants undertook the above-referenced conduct, their acts and
11 omissions as alleged herein are indicative and representative of unconstitutional policies
12 promulgated by the County and/or a repeated course of conduct by Defendants, and each
13 of them, in unconstitutionally enforcing the County’s policies, which is tantamount to a
14 custom, practice or procedure of the County and its agency, Permit Sonoma, of condoning
15 and encouraging the disregard of the constitutional rights of the residents of the County,
16 as alleged herein.
17

18 112. These actions, and the others by Defendants were undertaken arbitrarily,
19 capriciously, punitively, and in furtherance of illegal conduct that violated Cupp’s
20 constitutional rights and has directly and proximately caused Cupp to sustain actual
21 injuries and damages to his person as well as his financial and pecuniary interest in the
22 subject property, which has had its value substantially reduced as a result of Defendants’
23 actions, in an amount according to proof at trial.
24

25 **WHEREFORE, Cupp prays for Judgment as set forth below.**
26
27
28

COUNT THREE**MONELL LIABILITY****(Against Defendant COUNTY OF SONOMA)**

113. Cupp realleges each and every allegation contained in this Complaint and incorporates them as if set forth in full in Count Three of this Complaint.

114. The County in its official capacity, and under color of law, knowingly, or negligently, or with deliberate indifference to the rights allegedly violated, caused to come into being, maintained, fostered, condoned, approve of, either before the fact or after, ratified, took no action to correct, an official policy, practice, procedure, or custom of permitting the occurrence of the wrongs set forth in this pleading, and/or improperly, inadequately, with deliberate indifference to the federal constitutional or statutory rights of persons, with negligent or reckless disregard for those rights, failed to properly train, supervise, retrain, monitor, or take corrective action with respect to the Director, Code Enforcement Manager, Senior Code Enforcement Officers, and other inspection officers working with CED and with respect to the types of wrongful conduct alleged in this pleading, so that the County is legally responsible for all injuries and/or damages sustained by Cupp pursuant to the holding of *Monell v. New York City Dept. of Social Sev's*, 436 U.S. 658 (1987) and its progeny.

115. At all times alleged herein, the County had a duty to adequately train, supervise and discipline CED officers in order to protect members of the public, including Cupp, from being harmed by the actions of said officers. The County was deliberately indifferent to such duties, enacting policies that encouraged and promoted unconstitutional behavior by CED officers, and thereby proximately caused the harm to Cupp alleged herein.

1 116. The County's implementation of an unconstitutional policy, or its failure to
2 implement proper code enforcement inspection, citation, and collections procedures and
3 practices proximately caused the harm to Cupp alleged herein. The County's actions or
4 failures to act resulted in willful ignorance of Cupp's constitutional rights, willful
5 disregard for those rights, and malicious and reckless misconduct by Hoffman and Cablk
6 as well as by other County officials involved with imposing and collecting excessive fines
7 from Cupp as alleged herein.
8

9 117. The County's unlawful CEEP policy and Drone Use Policy, in lieu of proper,
10 constitutional code enforcement policies, promote, condone, authorize and approve of
11 CED's practices, procedures, and customs that have harmed and damaged, and continue
12 to harm and damage, hundreds, if not thousands of landowners in the County, including
13 Cupp. The County's code enforcement policies, customs, and practices were, and are,
14 malicious, reckless, or at least grossly negligent, and have resulted and continue to result
15 in a deprivation of Cupp's federal constitutional rights as enumerated herein.
16
17

18 118. As detailed herein, the County had a duty to properly supervise CED and its
19 activities to ensure that such code enforcement actions were in the public's interest and
20 did not harm Cupp's constitutional rights, property rights, or financial interests. In this
21 regard, the County intentionally, maliciously, and negligently failed in its duty, and even
22 now, threaten to dispossess Cupp of the subject property through abuse of judicial
23 process.
24

25 119. The County's code enforcement policies and practices are malicious, reckless,
26 and or grossly negligent in that they permit County officials and their agents to conduct
27 warrantless searches by means of drones and under other circumstances; execute and
28 obtain overly broad, defective inspection warrants; levy excessive and exaggerated fines

1 and penalties of hundreds of thousands of dollars for trumped up violations that do not
2 threaten to harm anyone or the public at large. The County condoned, approved, ratified
3 and maintained procedures and practices of using CED in an overly aggressive, harassing,
4 retaliatory manner against landowners, including Cupp, and in doing so blatantly violated
5 Cupp's constitutional rights.
6

7 120. Cupp is informed and believes, and based thereon alleges, that in doing the
8 acts alleged herein, or failing to take action, the County knew, or in the exercise of
9 reasonable diligence should have known, that Hoffman and Cablk were incompetent and
10 unfit to perform the duties for which the County employed or promoted them to perform,
11 and that an undue risk to persons such as Cupp would exist because of their employment.
12

13 121. Further, the County, by and through those employees and agents who trained
14 and/or supervised Hoffman and Cablk, failed to exercise reasonable care when training
15 and/or supervising them.
16

17 122. Plaintiff is informed and believes and thereupon alleges that the County had
18 advance knowledge of Hoffman's propensity to violate the constitutional rights of others
19 or otherwise engage in misconduct in his individual and official capacity, as he has a
20 history of such acts, and the County knew or, in the exercise of reasonable diligence,
21 should have known of such history, which made Hoffman unsuitable for employment by
22 the County, and certainly unsuitable for a senior inspector role at CED.
23

24 123. Despite this advance knowledge, the County hired and retained Hoffman as
25 employees in conscious disregard of the rights and safety of others, and of Cupp.
26

27 124. As a proximate and direct legal result of the County's negligence as alleged
28 herein, Cupp has suffered the harm alleged herein, in an amount to be determined at trial,
but in excess of the minimum jurisdictional limits of this court.

COUNT FOUR

TRESPASS

(Against All Defendants)

125. Cupp realleges each and every allegation contained in this Complaint and incorporates them as if set forth in full in Count Eight of this Complaint.

126. At all times alleged herein, Cupp legally possessed the subject property and had a reasonable expectation of privacy over the subject property.

127. At all time alleged herein, Defendants' entry onto the subject property was not authorized by a warrant, or a properly issued warrant, was without Cupp's consent, and without any privilege on the part of Defendants to enter upon the subject property.

128. As a direct and proximate result, Cupp has sustained actual injuries and damages to his person as well as his financial and pecuniary interest in the subject property, which has had its value substantially reduced as a result of Defendants' actions, in an amount according to proof at trial.

129. These actions, and the others by the individual Defendants were done intentionally, knowingly, maliciously and with an evil or improper motive amounting to malice; or with a knowing and conscious disregard for Cupp's rights; in a manner and according to methods that no civilized society should be required to tolerate. As such, the individual Defendants may, and should be, held liable for punitive or exemplary damages in order to deter such conduct in the future. undertaken arbitrarily, capriciously, punitively, and in furtherance of illegal conduct that violated Cupp's constitutional rights and has

130. Under California Government Code section 820(a), the individual Defendants are liable for damages for their own misconduct.

136. These actions, and the others by the individual Defendants were done intentionally, knowingly, maliciously and with an evil or improper motive amounting to

malice; or with a knowing and conscious disregard for Cupp's rights; in a manner and according to methods that no civilized society should be required to tolerate. As such, the individual Defendants may, and should be, held liable for punitive or exemplary damages in order to deter such conduct in the future. undertaken arbitrarily, capriciously, punitively, and in furtherance of illegal conduct that violated Cupp's constitutional rights and has

137. Under California Government Code section 820(a), the individual Defendants are liable for damages for their own misconduct.

138. Under California Government Code section 815.2(a), the County is vicariously liable for the conduct of the individual Defendants that was performed within the course and scope of their employment, though not for any award of punitive damages and no such award is sought against the County; however, the County may be required to indemnify the individual Defendants for some or all of the damages alleged herein.

WHEREFORE, Cupp prays for Judgment as set forth below.

VI.

RELIEF SOUGHT

WHEREFORE, Plaintiff RONALD CUPP, seeks the following relief on behalf of himself and others similarly situated:

1. A declaration that the actions of Defendants', and each of them, were and are unlawful and unconstitutional;

2. A temporary restraining order and preliminary and permanent injunction enjoining Defendants, and each of them, their agents and employees, from entering the private property of the residents of the County of Sonoma without first securing a warrant; unless Defendants, and each of them, their agents and employees have the

1 consent of the person in lawful possession of the property, unless the property presents
2 exigent circumstances, unless the property is “open field, or unless the search is
3 conducted from a public vantage point;
4

5 3. A temporary restraining order and preliminary and permanent injunction
6 enjoining Defendants, and each of them, their agents and employees, from using drones
7 to conduct inspections or searches of the private property of the residents of the County of
8 Sonoma without a warrant; unless Defendants, and each of them, their agents and
9 employees have the consent of the person in lawful possession of the property, unless the
10 property presents exigent circumstances, or unless the property is “open field;
11

12 4. A temporary restraining order and preliminary and permanent injunction
13 enjoining Defendants, and each of them, their agents and employees, from using drones
14 to conduct inspections or searches of the private property at a height greater than 400 feet
15 above the ground;
16

17 5. For damages and punitive damages, according to proof at trial;

18 6. For costs and attorney’s fees incurred in this action; and

19 7. For such other and further relief as this Court deems is just and proper.
20

21 Respectfully submitted,

22 Dated: April 30, 2024

YOUNG LAW GROUP

23
24 By: /s/Eric G. Young, Esq.
25 ERIC G. YOUNG, ESQ., Attorneys for
26 Plaintiff RONALD CUPP
27
28

VII.

DEMAND FOR JURY TRIAL

Plaintiff RONALD CUPP hereby demands a trial by jury on all counts and upon all relief sought herein that is so triable.

Dated: April 30, 2024

YOUNG LAW GROUP

By: /s/Eric G. Young, Esq.
ERIC G. YOUNG, ESQ., Attorneys for
Plaintiff RONALD CUPP

CERTIFICATE OF SERVICE***Cupp v County of Sonoma, et al.*****USDC-ND, San Francisco Division, Case No. 3:23-cv-001007-JCS**

At the time of service, I was over 18 years of age and not a party to this action. My business address is 2544 Cleveland Ave., Suite 210, Santa Rosa, CA 95403. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On April 30, 2024, I served the following identified document(s):

[POPOSED] FIRST AMENDED COMPLAINT

I served the document(s) on all interested parties as follows:

Name of Party/Counsel Served	Attorney For
ROBERT H. PITTMAN #172154 County Counsel MICHAEL A. KING #77014 Deputy County Counsel County of Sonoma 575 Administration Drive, Room 105A Santa Rosa, California 95403 Telephone: (707) 565-2421 Facsimile: (707) 565-2624 michael.king@sonoma-county.org	Attorney for Defendants

I served the above-named documents as follows:

BY FACSIMILE TRANSMISSION - pursuant to agreement of the parties, from fax number (707) 520-7272 to the fax number(s) set forth above. The facsimile machine I used complied with Rule 2.301(3) and no error was reported by the machine. Pursuant to Rule 2.306(h)(4), I caused the machine to print a transmission record, a copy of which is attached.

BY MAIL -

By personally depositing the documents in a sealed envelope addressed as set forth above with the U.S. Postal Service, postage fully prepaid, sent by regular mail and certified mail, return receipt requested

By placing documents enclosed in a sealed envelope addressed as set forth above for collection and mailing. I am readily familiar with my firm's practice of collection and processing correspondence for mailing. In the ordinary course of my firm's business, correspondence is deposited with U.S. postal service on the same day it is placed for collection, postage fully prepaid.

BY PERSONAL SERVICE - by delivering a copy of the document(s) by hand to the addressee.

BY EXPRESS SERVICE - by depositing in a box or other facility regularly maintained by the express service carrier or delivering to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served.

1 X **BY ELECTRONIC TRANSMISSION** By electronically serving the document(s) to the
2 electronic mail address set forth below on this date before 11:59:59 p.m. pursuant to and consistent with
3 Code of Civil Procedure §§1010.6(a)(2), (4), (5) and 1010.6(e).

4 **BY ELECTRONIC TRANSMISSION ONLY DURING CORONAVIRUS/COVID-19**
5 **PANDEMIC** – The document(s) were emailed to the persons at email addresses listed based on
6 notice previously provided that, during the Coronavirus (COVID-19) pandemic, this office will
7 be primarily working remotely, unable to send physical mail as usual, and is therefore using
8 only electronic mail. No electronic message or other indication that the transmission
9 was unsuccessful was received within a reasonable time after the transmission.

10 I declare under penalty of perjury under the laws of the State of California that the foregoing is
11 true and correct.

12 X I declare under penalty of perjury under the laws of the United States of America that the
13 foregoing is true and correct.

14 Date: April 30, 2024

YOUNG LAW GROUP

15 _____/s/_____
16 Eric G. Young, Esq.